S.B. CIVIL WRIT PETITION NO.4417/2004.
(GAUTAM KUMAR SINGHA VS. UNION OF INDIA & ORS.)

DATE OF ORDER : 06.04.2007.

HON'BLE MR. GOVIND MATHUR, J.

Mr. Arjun Purohit for the petitioner.
Mr. V.K. Mathur for the respondents.

Being found guilty for commission of an offence i.e. over-staying on leave without sufficient cause as provided under Section 19(b) of the Border Security Force Act, 1968 (hereinafter referred to as "the Act of 1968"), the petitioner was awarded a punishment of "Dismissal from Service" by an order dated 30.11.1999 passed by the Commandant , 129 Battalion, Border Security Force. A petition preferred by the petitioner giving challenge to the order aforesaid under Section 117 of the Act of 1968 also came to be rejected by the authority competent on 15.03.2000, hence this petition for writ is preferred.

The contentions of the counsel for the petitioner are:

1. No offence as provided under Section 19(b) of the Act of 1968 was committed by the petitioner as there was a cause sufficient for over-staying after completion of sanctioned leave.

2. The order impugned imposing the penalty of dismissal was passed without adhering the procedure as prescribed under Rule 143 of the Border Security Force Rules, 1968, and

3. The penalty of the dismissal imposed upon the petitioner is shockingly disproportionate to the guilty said to be proved.

In reply to the writ petition, the case of the respondents is that the petitioner after availing sanctioned leave for the period from 24.05.1999 to 02.07.1999 did not report on duty despite various notices given to him. According to the respondents, the petitioner over-stayed on leave for a period of 92 days. The allegation for not adhering the provisions of Rule 143 of the Rules of 1969 are emphatically denied by the respondents. It is also asserted that the petitioner remained absent from duties without any just cause not only once but thrice, therefore, the penalty of dismissal is not harsh.

Heard learned counsel for the parties.

The first contention of learned counsel for the petitioner is that no offence as defined under Section 19(b) of the Act of 1968 could be made out against the petitioner as he over-stayed on leave for sufficient cause. The petitioner while admitting the fact that he over-stayed on leave for a term of 92

days stated that due to natural calamity that was of flood at his native place, it was not possible for him to report on duty on 02.07.1999. The petitioner has also tried to justify his absence from duties on the count that he was busy with regard to construction of his house at his native place and as such no wrong was committed by him. From perusal of the pleadings and record of the case, it is apparent that the respondents before taking action against the petitioner by two notices instructed him to resume duties, but those notices were not at all replied by him. The petitioner had also not given any satisfactory reason for over-staying on leave for a period about three months. Even if, the factual statement given by the petitioner with regard to natural calamity is accepted, then too ample time was available to the petitioner to report on service under the instructions given by the competent officers of the Force. A member of Armed Forces is always required to be a disciplined person and his absence from duties unauthorizedly or without sufficient cause is nothing but a grave misconduct/ offence. Such offence cannot be taken lightly. In totality of the facts specially in view of the admission of the petitioner himself that he over-stayed on leave for 92 days, I do not find any force in the contention that no case for commission of an offence under Section 19(b) of the Act of 1968 could be made out.

I also do not find any force in the second contention of counsel for the petitioner that no proceedings as provided under Rule 143 of the Rules of 1963 took place while imposing penalty of dismissal upon the petitioner on admission of guilt by him. From perusal of original record, it is apparent that the Commandant recorded guilt of the petitioner on 30.11.1999 in following terms:

> Q.1. Question to the accused ?
> Name: How say you No.86232009 rank LNK Name Goutam Kumar Singha Are you guilty or not guilty of the charge preferred against you ?
>
> Ans-1 : Answer by the accused.
>
> **Guilty**
>
> "The accused having pleaded guilty to the charge, the court explains to the accused the meaning of charge to which he has pleaded guilty and ascertains that the accused understands the nature of the charge to which he has pleaded guilty. The court also inform the accused of the general effect of that plea and the difference in procedure which will be followed consequent to the said plea. The Court having satisfied itself that the accused understands the charge and the effect of his plea of guilty and particularly the difference in procedure."
> The Provisions of BSF Rules 142(2) are complied with."

A bare perusal of the proceedings noted above, it is apparent that the compliance of the provisions of Rule 143 of the Rules 1969 was sufficiently made. Further relevant to note that the petitioner after pleading guilty refused to call any witness in his favour. The contention of counsel for the petitioner that the penalty imposed is harsh and disproportionate is also of no consequence as it is apparent from perusal of the record that in the year 1996 and 1997 also he remained absent from duties for 99 and 88 days respectively. In earlier cases of over-staying, he was reprimanded by the competent authorities. A habitual offender cannot claim for any sympathy for a serious offence as prescribed under Section 19(b) of the Act of 1968.

In view of whatever discussed above, I do not find any force in this petition for writ, accordingly, the same is dismissed.

(GOVIND MATHUR)J.

Anil/